

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

MICHAEL JIMENEZ	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-152
JANICE HANSON, ET AL.	§	

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Michael Jimenez, a prisoner confined at the Gib Lewis Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Janice Hanson and Kent Dickerson.

The court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff contends the defendants were deliberately indifferent to his serious medical needs when they discontinued his special medical diet after determining that he did not suffer from food allergies. The medical report on which the defendants

relied, attached as an exhibit to plaintiff's objections, reflects that his blood test results showed an undetermined clinical relevance. Plaintiff's results were classified as Class 0/1 on a scale that ranges from Class 0 if no significant levels are detected to Class 5 for very high levels. Plaintiff disagrees with the defendants' interpretation of those results, but a disagreement over his diagnosis or treatment does not amount to a constitutional violation. *Stewart v. Murphy*, 174 F.3d 530, 537 (5th Cir. 1999); *Norton v. Dimazana*, 122 F.3d 286, 292 (5th Cir. 1997). Plaintiff has not shown that the defendants were deliberately indifferent to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). As a result, the Magistrate Judge correctly concluded that this action should be dismissed as frivolous and for failure to state a claim upon which relief may be granted.

ORDER

Accordingly, plaintiff's objections (document no. 5) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 3) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So Ordered and Signed

Nov 4, 2017



Ron Clark, United States District Judge